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BUSINESS MANAGEMENT FOR THE COURTS.

AS EXEMPLIFIED BY THE MUNICIPAL COURT OF CHICAGO.

IT WAS but a short time ago that the only controversy concerning the administration of justice was over the relative merits of code and common law procedure. This historic rivalry has now lost its force, for both systems of procedure have been submerged by the high tide of inexpert legislation. Experience shows that formality of whatever sort is no guaranty of results. The idea that courts must have freedom to regulate at least the less important and more numerous details of procedure has gained general acceptance.

New tribunals to meet particular needs are springing up with startling rapidity. We are threatened with a chaotic mess of courts and judges of varying authority, all dabbling in the exercise of what is ideally one and inseparable—the judicial power of the state. It took only a few years for the juvenile court idea to spread to all parts of the country. The small debtors' court and conciliation court appear destined to like popularity. Numerous localities are clamoring for courts of domestic relations, while such specialized tribunals as the boys' court and the morals court, by the value of their work where first created, promise nationwide acceptance.

The opportunity for increased efficiency through judicial specialization is by no means exhausted by these earlier inventions. Nobody can say how far specialization may extend under any given conditions. Judicial administration, as an art, is even less mature than law, as a science. At this early and unstable

stage, while change is rapid, it is timely to criticise these movements, to understand them, to learn their controlling principles and to bend them to the uses of an orderly and unified plan.

The judicial system over which a storm of angry criticism burst but recently is substantially the system of one hundred years ago. Two main elements which entered into it are still dominant; these are extreme decentralization and total lack of administrative control. The system was well adapted to the conditions of life then obtaining and it has continued to render acceptable service to this day in localities where conditions approximate those which were general at the time of its inception. In the remote districts, where Arcadian simplicity survives, where the railroad, the factory, the telephone and the daily paper are rare or unknown, little complaint is heard concerning the administration of justice.

Complaint is most insistent in those great centers of population and industry where now one-third of all our people reside. In a number of such cities an idea entirely new to American judicial administration is being tested. The new idea may be called most briefly "business management for the courts." It aims to supply definite authority and responsibility for the all-important work of administering justice and enforcing law. It recognizes the fact that there is involved in this service a great deal of administrative work which is really judicial business and which demands the same organization and vigilance that are necessary for success in any other private or public business.

It was but natural that the new idea should have originated at one of the points where conditions were worst and that it should have spread first to cities most in need of relief. A little more than ten years ago the administration of justice in the city of Chicago was about as inefficient as in any city in the country. In the face of extremely rapid growth the traditional court machinery had virtually broken down. The Circuit Court of Cook County, the court of general civil and criminal jurisdiction, had been previously supplemented by the creation of the Superior Court, with like jurisdiction. The Circuit and Superior Courts embraced twenty-six judges. One judge in each court had the title of chief justice, but the position carried no greater author-

ity than the purely honorary one of presiding at meetings. These courts had but one method of apportioning work and that was to assign to each judge two years in the criminal branch, two in the common law branch, and finally two in the chancery division. If a judge were reëlected after completing this circuit he was required to start in again in the criminal branch and rotate through the other departments. Absolutely no regard was had for the obvious fact that some judges were able chancellors and indifferent in the other branches, or that some were genuinely successful in criminal trials and a reproach in chancery causes. No regard was had for the equally obvious fact that a judge was required to change his employment just when he was becoming most valuable, and virtually throw away his accumulated experience and expert knowledge of decisions. No more perfect scheme for associating round plugs and square holes could possibly be devised.

It may be noted also in passing that increases in the number of judges serving without good business management had failed to promote efficiency. If you have three judges at work on unclassified dockets, and add a fourth, the capacity for work will be increased approximately one-third. But add five judges to an ungoverned bench of fifteen, and you do not increase the capacity of the court by one-third. The increase will be scarcely perceptible. This is due to the law of diminishing returns, a law which even a supreme court cannot invalidate.

Ten years ago the Circuit and Superior Courts handled all of the ordinary commercial causes of Cook County involving more than $100. The dockets were so glutted that every deadbeat had full assurance that he could not be disturbed for about three years if he simply pleaded the general issue. The commercial life of the city was like a train trying to make up time with its brakes set.

But the situation with respect to minor civil and criminal jurisdiction was, if possible, still worse. Fifty-four justices of the peace and one hundred constables made a living in such manner as they could. The justices who specialized in criminal matters —in other words, those who presided at police courts—were assigned to this service by the mayor *at the suggestion of alder-*

men. The control of the gateways to punishment or absolution was therefore held in great measure by the filthiest of petty politicians. These justices and constables, dependent wholly upon fees, plucked the helpless—and especially those who could not speak our language—in merciless fashion.

It will be seen that sufficient incentive for accomplishing a drastic change existed in 1904 when the Illinois Constitution was amended to permit of abolishing the office of justice of the peace and creating a municipal court, the jurisdiction and practice of which should be such as the General Assembly should prescribe.

The Creation and Organization of the Municipal Court of Chicago.

A sharp fight was waged in the legislature. The plan which prevailed was fathered by a citizens' organization. The committee which was responsible for the Municipal Court Act was guided by Carter H. Harrison and two leading business men, B. E. Sunny, president of the Chicago Telephone Company, and Bernard Eckhart, a wealthy miller and grain dealer. The draftsman for this committee put into the court scheme the ideas of business organization and definite responsibility which these men had gained in the business world.

Two main ideas controlled the creation of this court: It was intended to wipe out the disgrace of the justices' dens, and also to relieve business of the incubus of delay at *nisi prius,* by providing a competitive court with complete commercial jurisdiction and a business manager.

The jurisdiction actually conferred was as follows: In criminal matters the Municipal Court was restricted to the scope formerly given justices of the peace—it could try and impose penalties for misdemeanor, and could examine and hold for trial in felony cases; in contract causes no limit was imposed; in tort the limit was fixed at $1,000; no chancery jurisdiction was conferred. It was subsequently held that an action for damages occurring to a passenger carried in the city of Chicago would rest on the contract for safe carriage, and this gave the Municipal Court a considerable share of all the damage suits begun in the city, regardless of the amount claimed.

The Municipal Court Act created a body of twenty-seven judges to be elected for terms of six years and to receive $6,000 a year; a chief justice to be chosen in like manner and for a like term, and to receive $7,500; this court was to be a wieldy body subject to comparatively few restrictions in the basic act, but under the direct personal management from day to day of its chief justice. To accomplish this the act declared that the "chief justice, in addition to the exercise of all the other powers of a judge of said court, shall have the general superintendence of the business of said court; he shall preside at all meetings of the judges, and he shall assign the associate judges to duty in the branch courts, from time to time, as he may deem necessary for the prompt disposition of the business thereof, and it shall be the duty of each associate judge to attend and serve at any branch court to which he may be so assigned * * *. The chief justice shall also superintend the preparation of the calendars of cases for trial in said court and shall make such classification and distribution of the same upon different calendars as he shall deem proper and expedient. Each associate judge shall at the commencement of each month make to the chief justice, under his official oath, a report in writing of the duties performed by him during the preceding month, which report shall specify the number of days' attendance in court of such judge during such month, and the branch courts upon which he has attended, and the number of hours per day of such attendance, * * *. It shall be the duty of the chief justice and the associate judges to meet together at least once in each month, excepting the month of August, in each year, at such hour and place as may be designated by the chief justice, and at such other times as may be required by the chief justice, for the consideration of such matters pertaining to the administration of justice in said court as may be brought before them. At such meetings they shall receive and investigate or cause to be investigated, all complaints presented to them pertaining to the said court, and to the officers thereof, and shall take such steps as they may deem necessary or proper with respect thereto, and they shall have power, and it shall be their duty to adopt or cause to be adopted all such rules and regulations for the proper

administration of justice in said court as to them may seem expedient."

The foregoing provisions (1) give the court power to create and regulate procedure subject to the items enumerated in the act itself; (2) make the court responsible for the administration of justice within the limits of the jurisdiction conferred; (3) permit the classification of causes upon separate calendars, so that the chief justice can at any time, by the mere signing of an order, create a special tribunal and assign to it a judge specially suited to the particular work; (4) require the associate judges to perform the duties to which they are assigned by the chief justice and to put in a fair day's work; (5) require the judges to meet at least monthly to receive and investigate all complaints brought before them and to consider opportunities for the improvement of the service generally. Here are nearly all the elements of a businesslike, wieldy, responsible judicial organization, subject to a controlling mind; here are the features absent from the traditional court system. In a court so constituted nobody is in doubt for a moment as to where a complaint should be lodged, or as to what particular public servant should be blamed in case results are unsatisfactory. The need for publication of records and for disinterested auditing was met by the first chief justice of his own accord, and later, when the act was amended, the annual publication of complete data was made obligatory.

This act gave the people of Chicago a new court utterly different from any court ever created in this country. The people were hopeful but there was no undue assurance that the problem had been solved. It yet remained to get the right judges, and particularly the right chief justice as administrative head, or business manager, for this unique business court, and then much would depend upon the way in which the powers conferred by the act would be developed.

There was one big element making for success which was not taken into account at that time. It lay in the importance of the role of chief justice, as head of a powerful, wieldy organization committed to the task of redeeming the enforcement of law in a great city, which importance made it possible to negotiate the

candidacy of a man full-statured, broad-gauged, ambitious, experienced, and strong-willed. Such a man was Harry Olson, then and for ten years previously assistant state's attorney. Olson was the super-dreadnaught of the state's attorney's office. He intended to enter private practice where his powers as trial lawyer would insure gratifying returns.

But the opportunity for distinguished public service drew him more powerfully than the chance to acquire wealth; he accepted the nomination. At that time the convention system of nominations was still in vogue in Illinois. It was in order to select candidates for the twenty-seven associate judgeships. The selections were made in advance of the convention, in accord with custom, and Olson was given such a free hand in selecting, that the resulting candidates were in every sense "hand picked." This ticket prevailed at the polls so that the new court was instituted December 1, 1906 with a willing and ambitious force of judges. They were young men, it is true, and mostly without judicial experience, but this may have been in their favor.

Within a few months the chief justice and other friends of the court had 44 of the 67 sections of the act amended. Provision was made for economical record writing by adopting a set of abbreviated forms corresponding by serial numbers to regular amplified forms which were used only in cases in which transcripts were required. This put the records of the court on what might well be called a card catalogue system.

Taking over the business of the justices of the peace and assuming the vast amount of commercial litigation which was offered gave the court an arduous regime during its first year or two, and prejudice on the part of the bar and the judges of other courts had to be overcome. But the court had a genuine leader, tireless in his work at judges' meetings, in the city council, in the press, in the upper courts, in the legislature, with political committees, and before the people in campaigns. The court had to be defended on numerous constitutional questions, the act had to be amended several times, and after every such amendment the act had to be ratified at a popular election. In the first year 30,877 civil causes were disposed of and 6,227 were left on the docket. Fifty-eight thousand two hundred and twenty-seven criminal and quasi criminal causes were disposed of.

Before two years had elapsed the court was a going concern, keeping abreast of its work in spite of continual increases; it had won the confidence of the public and commercial lawyers were enthusiastic about it. The time had arrived for tackling the problem of simplifying procedure in first class civil causes, a problem quite generally considered insuperable among the common law practitioners of Illinois.

Judge Stephen Foster was sent to London to study the modern English practice, and upon his return a few simple rules, thirty-four in number, were drafted. They have not been changed since, and under them the miracle of freeing pleadings from deadly formality has been fully accomplished. The essence of the rules lies in plain common sense; the plaintiff must at the beginning set forth the substantial facts upon which he bases his claim, in an informal and brief statement, supported by affidavit in all cases of liquidated damages. The defendant, then, in order to get a footing in court, must show under oath that he has a meritorious defense. Every year thousands of causes are determined by entering judgment on default because the defendant dare not file an affidavit of merits. In other Illinois courts these actions would clog the calendars for months and years.

While the simple pleadings have tremendously reduced the amount of time wasted in trying incidental issues it has not been possible to change the rules of evidence, so that simple trials may take an entire day, and more involved ones a week or more, in this court as in others.

The report for 1914 showed that money judgments amounted to $5,543,691.41. Those rendered by the Circuit and Superior Courts for Cook County, with a force of thirty-four judges (now increased to forty) amounted to but little more than half as much. The court with the simple procedure, a system within the comprehension of the lawyer's clerks, in open competition with common law procedure, has done vastly more business. Its money judgments, in fact, are greater than those of the High Court division of England and Wales, trying the causes for about thirty millions of people.

The population of Chicago has increased more than thirty per

cent. since the inauguration of this court, partly through annexation of territory. The judicial staff has been increased by three units, about ten per cent. The output has increased from a total of 97,718 causes for the first year to 204,532 for the eighth year. The court employs 175 assistants to the chief clerk and 151 deputy bailiffs. Its gross expenses in 1914 were $855,659.48 and its gross receipts from fines and fees, $738,542.08.

While this court has exclusive jurisdiction within the city of all minor causes it is a mistake to assume that it does not also pass upon controversies in which great sums are at stake. Every sort of action not involving equitable remedies is brought before this tribunal, and by virtue of the Hepburn Law its civil range is much extended, for the shipper of livestock from the most distant states can sue in Chicago if he has a claim against a railroad.

The development of the autonomous powers of the court is all the more interesting because it has been so largely unconscious. The chief justice has been confronted day by day since the court was instituted by the necessity for meeting concrete issues. The work of the people must be done in some way, and at once. To let it pile up would be fatal, for a confession of defeat would appear in the next published report. There was no time for elaborating theories. There was no thought of solving great administrative problems for the benefit of other cities. There was no way to "pass the buck," a favorite expression in Chicago, since eight Circuit and Superior court judges successively declined to sit in a cause resulting from the capture of a lawyer guilty of a villainous conspiracy to use the courts for blackmailing purposes.

The Creation of Specialized Branches.

There was a certain amount of work, of varying nature, to be performed. At the beginning the Chicago court had the same measure of specialization that was common in other cities. Certain judges sat in police court and others took their quota of civil causes. It soon became evident that certain classes of causes could be segregated upon special calendars and handled separately to advantage. One judge, for instance, could take care

of all the replevin, attachment, and garnishment causes, and become so expert that no lawyer could excel him in knowledge of the statute law and decisions. To another judge were assigned all the actions for the recovery of possession of real estate. The quasi-criminal actions brought under city ordinance by summons were also segregated. The court was becoming organic. Judges were becoming specialists. Increased output of a higher quality was observable. For the first time the conspicuous need for specialist judges in a unified court, as against specialized tribunals with hit-or-miss judges, was met. It was inevitable that the resultant progress should lead to further development of the principle.

The first great invention in judicial administration came about by grouping allied causes which affect the stability of the family. Such causes as offenses against minors, bastardy, desertion and failure to support had been handled in all of the eight or nine criminal branches, located in conjunction with police stations throughout the city. There could be no consistent attitude on the part of the court toward such an offense as failure to support, and there could be no constructive policy as long as these cases came up in separate court rooms, the judges of which were merely charged with the duty of punishing for the specific offense. It was routine work to them.

Walter Lippman classifies all officials as either "routineers" or "inventors." Chief Justice Olson is an inventor. He issued an order that all these allied causes should be put on a separate calendar; that they should be tried in a branch court located centrally at the City Hall, and then he assigned to this new branch Court of Domestic Relations one of his most open minded judges.

Immediately a new regime had commenced. In every cause all the troubles of the family were laid bare and the court employed every means, legal and social, to bring about a satisfactory status. Fifty or more social organizations became allied with the court; every fraternal society and every church in the city became a potential ally. The court shaped a destiny for its erring wards and solicited the most powerful social influences to exert a continuing pressure. From the standpoint of the law-

yer, earning a livelihood by conducting the litigation of his clients in the civil courts according to contentious procedure, this is no court at all. It absolutely fails to classify in his consciousness, but it persists because *there is a demand for just this sort of thing and our jurisprudence has to grow to embrace it, or perish in the attempt.* Either our judicial system will develop to meet modern needs or it will give way to some agency that can do the work, as we see it already giving way to public service commissions, railroad commissions, commerce commissions, and like bodies.

The branch Court of Domestic Relations, though a tremendous success from the beginning, falls short of the ideal, for it has no divorce and no felony jurisdiction. What is essentially one controversy may still, in Chicago, be adjudicated piecemeal in the Municipal Court, the Probate Court, the Juvenile Court, the Criminal Court, and so forth. The absurdity of putting the state's indivisible judicial power into a number of watertight compartments still survives.

The next experiment with specialization in the judicial field segregated all the causes involving violation of the state and city automobile laws in the Speeders' Court. To this new branch was assigned a judge who did not own an automobile and who was not owned by the owner of any automobile. Fines went up immediately from ten and twenty-five dollars to fifty and one hundred dollars, but better than this was the adoption of a uniform and systematic increase regardless of social eminence. At that time Chicago's streets were speedways. In sixty days the automobile drivers had learned their lesson fairly well. They had contributed $10,000 in fines. Highways were safe. The breath of life had been breathed into laws which formerly had been valueless. The customary way would have been to go on enacting more laws with heavier penalties which juries would have refused to inflict, while the evil persisted. In the typical American jurisdiction we have no knowledge as to the sufficiency of penal legislation for the reason that we have no adequate means for enforcement. We try to conjure our evil spirits by voluminous statutory incantations when a bright axe would do more good.

The next class of causes which defied uniform and consistent treatment when scattered throughout the police court branches was found to comprise those arising from vice conditions, and this led to the creation of the Morals Court. The Chicago vice district had been officially closed. Of course this was a policy, not a solution. Nobody had discovered legal measures for repression of vice which would be other than sources of corruption for the police. The Chicago Morals Court is a step nearer than any other measure yet devised. At least the Morals Court does not despoil the prostitute so that she will be more dependent after discharge than before arrest. A woman physician is on the staff and opportunity is afforded for examination and free hospital treatment. Most of the offenders accept the offer.

A few years ago Chief Justice Olson met a tremendous need by the creation of the Boys' Court. Male offenders between the ages of seventeen and twenty-one had always been treated the same as adult offenders. Statistics showed that a majority of all first offense felonies were committed by boys under twenty-one. Olson's ten years in the prosecutor's office had given him a world of experience with these types. He had begun also a serious study of mental defectiveness, and he had suspicions as to the mental fitness of much of the human flotsam drifting through the criminal branches. It was obvious too, that from this class of boys must be recruited the ranks of professional criminals.

So the Boys' Court was established by a simple order directing the officers to present all male offenders under the age of twenty-one at a certain branch court, designated by number, and another order assigning a certain specially chosen judge to sit in this branch. The public had been prepared for this development through the press. On the day for instituting the new branch the judge's desk was banked with the most costly roses. Heads of the leading social organizations, judges from other courts, newspaper men and prominent citizens generally were present and an impressive ceremony marked the first day's session. The new court was instituted with a moral momentum sufficient to keep it in the grooves of efficiency for at least a year. This specialization on youthful offenders did not reform

Chicago in a day or a year but it has made scientific conclusions possible and slowly a wise policy is developing, which will permit of saving as large a proportion of these boys as lies within human possibility.

At this stage the opportunity for further specialization appeared to be limited. But one great problem remained before the Municipal Court. It was a fact, and a reproach, that in the smallest civil cause a defendant could demand a jury and create so much delay and cost that justice—real justice—would be foreclosed. There was a strong presumption that there was little justice for the small claimant in Chicago.

Of course there could be no deprivation of the right to a jury, nor could there be any limitation upon the right to be represented by counsel. In Cleveland a branch Court of Conciliation, so called, had been working out substantial justice in small causes. It represented the first instance of judicial invention in one of the municipal courts created in imitation of the Chicago court.

Conciliation appears to be something in lieu of adjudication. The need for conciliation is more or less a reflection upon the judicial system. Chief Justice Olson wanted to solve the problem without departing in the least from orthodox adjudication. There must be a judicial finding of facts, and then an application of the appropriate rule of law. And yet there cannot be the waste of a jury's time and the waste of time implied by adherence to our overgrown system of eliciting evidence in jury trials. He came to believe that the people would relish a little informal justice, and that, after all, the real essence of a court is a judge who has the nerve to administer justice forthwith.

And so the Small Claims Court was established by directing the chief clerk to enter all civil suits for thirty-five dollars or less on a separate calendar and by assigning to the new branch Judge Newcomer. The first days of the new court were highly entertaining. As had been foreseen by the Chief Justice, the public took kindly to the new idea. The lawyers were a little bewildered by having the judge take the case directly into his hands. but they soon learned to acquiesce. They found that, so far as they were acting in good faith, the new idea assisted them to earn their fee with less effort and time than before. The ap-

proval of litigants was shown by the absence of appeals. So now small claims are put on the side with assets in Chicago. Every month hundreds of deadbeats are brought to book. The great mass of people who never figure in any but small claims realize that they have a real court, their powerful friend as far as they deserve a friend, and their unswerving mentor, wholly beyond influence or personal appeal, if they fail to do justice.

Space will not permit the telling of the Chicago court's newest, and possibly greatest development, its Psychopathic Laboratory, through which the most subtle of sciences serves the court by determining shades of mental capacity and responsibility.

The Present Shortcomings of the System.

Before summing up it is best to ask whether this unusual court has any shortcomings. The stranger will doubtless express surprise at the idea of Chicago being a place where justice is administered ideally. The Municipal Court of Chicago has obvious shortcomings, and nobody would pretend for a moment that the administration of justice in Chicago generally is perfect.

It is a curious fact that Chicago has more homicides than any other great city, is infested by criminals of every kind and yet possesses the most responsive and responsible court, the forerunner of a new system of judicial administration, a court which combines fearlessness with the most delicate poise and sensitive reaction to civilizing influence.

The explanation is simple. The Municipal Court has no criminal jurisdiction beyond that formerly exercised by justices of the peace. In cases of felony, after finding that probable guilt exists, the court can do no more than hold the accused to the grand jury. From that stage the powers of irresponsibility rule. The State's attorney has almost undisputed power to *nolle pros* at any stage. He can ignore the Municipal Court entirely by beginning before the grand jury. If he should be disposed to let an offender slip after probable guilt has been established in the preliminary examination, he has only to fail to subpœna all of the people's witnesses before the grand jury.

The grand jury is the grand humbug. Beyond it lies the Criminal Court, presided over by judges of the Circuit and Su-

perior courts. The people's witnesses are quite exhausted by former appearances and months of waiting before they arrive in the Criminal Court. Dangerous criminals give bail and succeed in prolonging the time before trial. Some undoubtedly commit new offenses to earn their lawyers' fees. The procedure in the Criminal Court is cumbersome, and beyond it lies the Court of Appeal and the Supreme Court. Of course there are unfortunates, and friendless persons and some whose offenses are too sensational to permit of escape, and these make up the ten per cent. of those held to the grand jury who are eventually convicted. If the Municipal Court were given felony jurisdiction the percentage of convictions would be nearer ninety than ten, and Chicago would speedily become a different city.

The Municipal Court has other limitations. The political price of passing the act originally was making the offices of chief clerk and chief bailiff political. The judges of the court ought to have the power to fill these positions and this would undoubtedly permit of running the court with a smaller staff than at present. It is a curious fact that the cost per case for clerk's services is greater than the cost for judge's services, although judges now receive $9,000 a year, and few clerks get more than $1,200.

There is another, and most serious political limitation. Illinois has many elections and Cook county, with 144 elective offices, has one of the longest ballots in the country. The new court started with men selected for nomination by the assistance of the man who was to be responsible as chief executive for the success of the court. These nominees chanced to be elected. But every two years thereafter nine new judges were put on the bench. The direct primary, a very good thing in small cities and rural districts, is a cursed thing in a metropolis. Supposed to curb the political bosses and restore power to the people, it does exactly the opposite. Unfortunately for the court under the direct primary, men with little legal experience are likely to be selected for a judgeship, thus lowering the average of the court.

A very serious problem is presented. The court pays its judges $3,000 a year less than the judges of the Cook County

courts. Their term is but six years. Lucky is the candidate for judicial office who can fight through a primary and election with an expenditure not exceeding $4,000, to say nothing of months of time devoted to his canvass. The men at the bar who might bring the greatest support to the distinguished leadership in this court, who might by their reputations command confidence in the profession, are hardly to be induced to accept a nomination.

The situation is peculiar. The direct nomination principle has not killed the political boss but has added to the necessity for his existence as a useful middleman in politics. But it has sufficiently interfered with his former clear prerogative of selecting candidates so that now there is no responsibility in any quarter. It is impossible to restore such a function to an electorate of three-fourths of a million, and wrench it from party leaders—who formerly exercised the power of nominating with considerable discretion—simply means that blind chance is now invoked as an important agency. Being a scholarly and esteemed lawyer does not recommend a man for the primary ballot so much as being a representative of some faction, political or racial, so that we have candidates running for the nomination because their names indicate Irish, German, Scandinavian, Polish, or Jewish descent. Of course, in the final election the result is likely to turn on national politics. In the fall of 1914 one of the ablest of the Municipal Court judges, was defeated for re-election by about 4,000 votes; but in the spring he was elected by 139,000! Under such cataclysmic conditions the outlook for real juristic material is indeed foreboding, not only for this court, but for the Circuit and Superior Courts as well.

If means are discovered for introducing some measure of responsibility with respect to nominations, as by recommendations by the bar, or by some special body similar to the Municipal Voters' League, it will not be restoring political power to the mass of voters. It will be merely vesting, in a measure, and extra-legally, the nominating power in an imperfectly defined body only *slightly* responsible for the administration of justice, and possessed of no very high degree of expertness.

The logical step of course would be to preserve popular power

by having judges selected by an *elected official charged with the due administration of justice.* The only way so large an electorate can participate is by delegation of power, and no other official can be expected to devote as much care to the selection of judges as the head of the court who is made responsible for their success as judicial administrators.

The Business Management.

Court is opened every morning in thirty courtrooms in the city of Chicago by Municipal Court judges. Eight of these branches are held at outlying police stations. The rest are held in the City Hall. A judge working on the civil calendar, who finds himself without business during the course of the day, notifies a special clerk in the office of the chief justice, and a transfer is immediately made from a call which is overloaded, so that a fair day's work can be done and litigants and counsel need not wait in one courtroom while a judge sits idle in another.

Another special clerk has charge of the jurors, who are grouped in a common waiting room after discharge; when a jury is needed one is made up in a moment. The court is not kept waiting nor is it necessary to keep two or three idle sets of jurors for every judge. This device effects a saving of about $30,000 a year over the plan pursued in the county courts.

Assignments of causes are all made by number and in an entirely impersonal way. Neither litigants nor judges know what judge will preside at the trial of a particular cause, except it be one falling to one of the specialized courts. The chief justice assigns the associate judges to various branches much as a military strategist would place his generals. In this way the best services are obtained from men who are specially expert in certain lines, or in the case of some it might be said that they are permitted to do the least harm. Intelligent direction trains new material and enables a judge to prove what he is best fitted to do. It permits also of shifting units about so that the work will not become too monotonous. Some of the positions make an enormous demand on nervous energy and a few months is all that is good for a judge in such a branch.

The chief justice is kept in touch with every courtroom through reports from judges and by unofficial reports from lawyers and laymen; at least he will know very soon if any associate judge is taking a course calculated to bring the court into disrepute. People with a grievance do not waste much time wrangling with the trial judge. They go directly to the chief justice or submit their complaints by mail. No complaint which bears evidence of being made in good faith is disregarded.

The monthly reports, in tabular form, reveal the entire working of the court and afford information as to whether the court is keeping abreast of its obligations by comparison with the same months of previous years. The annual report affords a wealth of data of exceptional value in formulating policies. It forms the basis for new legislation which is lacking in other cities, and the absence of which results in so much legislative guessing. Fact is substituted for clairvoyance.

The reports also have a decided disciplinary character. The year's doings are all down in black and white. It is hard for judges to slacken up when their records are public. They naturally strive to set a higher mark every year and enjoy the satisfaction which comes from a duty well performed.

If an individual judge falls short of satisfactory service, and the defect cannot be cured by a transfer to a more suitable branch, the matter may become the subject of discussion at a monthly meeting of judges. In an organized court, every judge, for his own sake, becomes perforce the jealous guardian of the reputation of the entire court. As an individual each Chicago judge is but one in seventy; as a member of an indispensable court which possesses the public confidence, he has far greater importance. This jealousy for the reputation of the court results in automatic self-discipline. The judges lay down the correct policy very clearly at their meetings, making the disciplinary work of the chief justice comparatively simple.

The chief justice has more than the letter of the statute to stand upon in the exercise of his duty as chief censor, for he stands ready to protect every associate judge against unfair attacks, and this protection is very necessary and is greatly appreciated. Chicago judges are obliged to keep their hands in

politically. Under the direct primary the judges of the Municipal Court are largely men who have stored up a certain political capital in one or more wards. After election they are sometimes expected to repay their supporters, to make good, and their position would be very embarrassing were it not that the chief justice enables them to declare independence of all entangling alliances. By standing for the court first and last they can win a citywide standing worth far more than preëminence in a parish.

An associate judge complained of is given a chance to explain away the complaint, as he ordinarily can do. If he cannot he is given a chance to make amends. So long as he shows a right spirit the affair is a secret between himself and his superior. This explains why it is that this large body of judges work together harmoniously to a common end under a common leader. The very judges who would be first to yield to nefarious influences—and the disrupting pressure can be made mighty strong in Chicago—because of their weakness of character, are the ones who most look up to the chief justice to extend to them a fatherly charity.

The public has learned in Chicago one important thing which must eventually be learned everywhere—that the court is much greater than one of its judges. Sometimes an assignment of a new judge to some quarter of the city results in a storm of protests. The judge is given a fair trial and then one of opposite temperament is substituted. The people learn that it is the individual, and not the court, they have blamed.

And this point reveals an almost universal instance of myopia. Under the old regime, before the era of large cities, the judge was the court. Because the courts had certain powers, and could not be compelled by the executive arm or dislodged by the legislative, we said that the court was independent, and we glorified in the independence of the judiciary. As a matter of fact it was only loose thinking which attached this independence directly to the person of the judge and treated judge and court as identical.

So far as the application of law in the given case is concerned no judge is independent. He is necessarily dependent upon the

appellate branches. Our system obviously is shaped to deprive the trial judge of discretion so he will not be affected by the appealing elements of the case at bar, but will decide, on pain of reversal, in accord with the body of impersonal law laid down for his guidance.

His supposed independence as to administration is *mere lack of supervision,* for it extends only to the privilege to leave undone for a time the things which ought to be done. Even the more capable and conscientious judges are made to feel their dependence occasionally by being retired to the ranks by some political blunder or accident.

Now it may be said that the Chicago court scheme deprives the judges of independence. This cannot be maintained without a sophistical muddling of court and judge. The court not only has the historic independence of the trial court established by the Constitution, which is so dear to us, but it has more freedom than any other such court, for it can formulate its own procedure and even create specialized tribunals at will, without reference to any other authority. It is the most independent court in the country, and if it were not so it could not have blazed a way through the wilderness of metropolitan court administration as it has in the past ten years. If the court possesses full historic independence, then one need not inquire if the judges are dependent or not. They at least exercise this great power. They are entirely independent as to the proper rendering of the services for which they are paid. They are dependent only when they begin to kick over the traces. There is discipline, but it is rightly safeguarded.

Conclusion.

While Chicago affords the most striking instance, largely because of the difficulties experienced there in making judicial nominations, the success of the idea can be proved quite as readily in other cities that were prompt to copy the Chicago court idea. Cleveland cleaned up quickly on a bad mess—a combination of politics and inferior judgeships—with her municipal court patterned after Chicago's. Milwaukee substituted capable judges for ignorant justices of the peace when she cop-

ied Chicago in her new Civil Court. Buffalo and Pittsburgh raised themselves to a standard of judicial decency in like manner. In New York City both the minor civil, and the minor criminal, courts embody the idea of administrative authority and definite personal responsibility. Atlanta, Philadelphia, and Cincinnati are more recent beneficiaries.

In none of these cities has the idea been given the most favorable test because the *nisi prius* branch has been excluded. This, however, is a mere temporary phenomenon. The success of an organic and wieldy court, a court with a business manager, is so conspicuous that other courts in the same locality are unavoidable held to a higher standard of accomplishment. In order to make good they too must adopt business methods. In Chicago the Circuit and Superior Courts have been struggling for several years to get into a harness and to exchange their vaunted independence for a chance to do business.

It appears inevitable that business management for courts must become universal in the larger cities. As well conceive of a department store being successfully run without a manager as to conceive of the manifold duties involved in administering justice in the modern city being accomplished by the mere voluntary acts of unorganized judges.

There is no intention to hold up the simple and extreme type of the Chicago court as an ultimate type of organization. It is already apparent that modifications can be made in it to advantage. It is too great a task to impose upon one man to require him personally to supervise all the administrative acts of thirty judges. Before the plan can be extended to include all the judges of Cook county it must be reshaped to bring the responsibility within ordinary human capacity.

In the world of commerce and industry such simple problems were long ago worked out. The court must become departmental. The central authority must be exercised by duly constituted delegates, one for each department. In legal language what is needed is to create several permanent divisions and provide each with a presiding justice. A court of more than twenty members is rather large to permit of direct and equal participation in management by every judge. There should be instead

a council composed of representatives of the various divisions. Naturally the presiding justices would be members of the council *ex officio,* and the chief justice naturally would be the executive head of the council. A central body so constituted would afford through its constituent membership a view of the activities of every division, and it would have a representative in every division with authority to carry out its policies. The council would formulate the plans for the government of the court, which plans would be executed by the chief justice. Within the various divisions as much specialization should be provided as might appear desirable from time to time.

Principles of organization calculated to conserve responsibility have been worked out thoroughly in business. The progress thus far made in judicial administration has come from the adoption of the simplest of these principles. The difficulties of administering justice in the large cities make it probable that there will be further drafts of plain business method in the courts. The problem is difficult in the big cities, because there are a number of judges of equal rank and if nobody has authority to set them to work in fields suited to their individual talents and experience they are certain to squander their energies. The greater the number of judges the higher the percentage of sheer waste.

The problem of administering justice throughout the average state is also difficult as at present viewed, but for different reasons. The difficulty in the widely spread population comes from the separation of judicial units owing to the feudal instincts which survive in our politics. We have not yet fully learned to think in such vast units as the entire state, but we are advancing. As a matter of fact the average state today, regardless of area, is more readily administered than a single county before the advent of the telegraph, the telephone, the daily paper and the daily mail.

The time approaches when we shall say of such a state that it possesses an indivisible judicial power vested in certain judicial agents, and that it has a certain amount of judicial business to be performed every year. There is no escape from this work. The way to get it done most easily and most acceptably is to

make somebody responsible for the direction of all the judicial agents so that they can work effectually and not waste their time or create muddles by trying to cover too wide a field. Business management is as much needed for the courts of a state as for the courts of a large city. Somewhere in every state there is a deal of lawlessness, somewhere there is judicial slovenliness. All this can be made over without any loss to our precious jurisprudence.

Smaller cities will soon be clamoring for the benefits arising from specialized courts. Every county seat will demand its court of domestic relations and every town its small claims or conciliation court. The creation of numerous ungoverned and unassociated courts will result in just the opposite of what the people intend. Specialization is the demand of the times, but *unification should precede specialization.* Without an overhead organization specialization means a new form of waste. Without unification, our court system, already intricate though not organic, will become increasingly complex. The only recourse is to make it some one person's sole business to get results from the machine, and adequate power must be conferred to this end.

Here we meet a possible objection that so much power in the hands of one individual is dangerous. But as head of an organic court the chief justice, or business manager, has power only as long as he exercises it reasonably. In the first place he has no power to supersede existing authority with respect to the essentially judicial function. The judges subject to his administrative direction remain responsible to the appellate courts in the exercise of their judicial power. If such a chief justice were to abuse his position by undertaking to compel a decision thus or so in a given cause he would but destroy himself, for the mighty power of publicity is available to the associate judge as well as to the chief justice.

It may be urged that the work of the Municipal Court of Chicago is but the reflection of the genius of one man. It may readily be granted that only the man with genius for public service, with the eye of the prophet and the energy of the pioneer, could have made this court what it is. Yet we can assert that no exceptional qualities are required to travel the path that

has been blazed. One can even go so far as to hold that when the tradition of judicial business management is better established even mediocrity will accomplish more than could be accomplished by superior brains under the old regime of ungoverned courts.

There may be a fear that the people may select the wrong man for chief justice and so ruin the efficiency of an entire court. But the qualities needed in a judicial manager are qualities much more readily discerned by the people than are the qualities needed in a supreme court justice. They are probably more common as well. All that a candidate for this office can promise is prompt and economical service. He can make no demogogical appeal to construe the law to please a majority because legal construction is not one of his duties. He is an executive pure and simple, applying the one thing lacking in our judicial system, and one could even imagine fairly good success for such a court if a competent business man, one of those trained to administration in industrial fields, should be chosen.

Mindful of the spirit of unrest which characterizes our times, lawyers have been fearful lest the agitation for change in judicial procedure should destroy elements of our jurisprudence which stand as ramparts of defense. There runs through our law a glorious disregard for persons and rank. In theory the least among us is the peer of every other before a court of justice. We feel that it would be a dark day for democracy if the discontented could write into our law a special concern for any element.

The trouble has been that the theory of equality before the law has been in recent times little more than a theory. It does no good to head the compass course if the only way the ship makes is leeway. The lack of equality before the courts was told calmly but boldly by the great jurist and statesman, William H. Taft, when President.

Various threats have been made and have been combated by an indignant profession in the past few years. The judicial recall, the recall of decisions, the barring of all privately retained lawyers from the courts, and other radical movements have been launched at one or another of the alleged shortcomings of our

courts. While these spectacular campaigns have engrossed public attention the real change has been in progress, quietly, insidiously, unrelentingly. The change has been expressed in two forms. In one the judicial institution has instinctively sought to develop organs which will enable it to survive amid a new environment. This is the municipal court idea, founded upon Chicago's experience. The other expression of change has been hostile to our traditions. Because our courts have lacked administrative co-ordination, civic forces, not to be denied, have shaped new instruments to adjudicate the living issues of modern law. We can see these new tribunals in the swiftly multiplying commissions in many of our states. Wherever the demands of industry are most insistent, wherever population is most dense and courts are most backward in their work, there we see railroad commissions, and public utility commissions, and wage arbitrations—bodies called administrative but in reality doing the work which courts have done immemorially, and doing it without the safeguards which courts have established to protect rights. They succeed because the age demands economical production, and has no reverence for empty formalism, the kind exhibited when a supreme court writes *finis* on a cause after all the original litigants are dead. These new tribunals throw to the winds the rules of evidence, because under our jury and appellate system the knotty subject refuses to be reformed.

If we looked only upon this swiftly growing movement we might easily forecast a day not far distant when our courts, still dignified and ritualistic, would be holding an empty bag, good for nothing but spanking delinquent juveniles, keeping books for dead men, sorting out crazy folk, marrying couples, and collecting bills for the grocer and the butcher. But we may defer despondency until we shall have tried further the development of the *business management principle* which is the heart of the municipal court idea.

Is it not true that most lawyers have feared for the integrity of our judicial system amidst this period of experiment and clamorous change because we have secretly, or perhaps unconsciously, realized its unfitness to survive at a time when all institutions are subjected to more searching tests? They have known that it

could not measure up on the ledger page triumphantly. The development of organic powers, the adoption of specialization to acquire a greater and better output, is a necessary evolution, if our system is to survive amid the new stresses. It will be noted that this borrowing of new powers does not involve the sacrifice of principle. Our appellate courts remain as meticulous as ever. The change virtually is but an organization of responsibility on the administrative side of the judicial function to balance that organization of responsibility as to the essentially juristic function which was worked out so thoroughly over a century ago.

In this new movement there is no unfriendliness towards judges or lawyers. Holding both up to organized discipline and to higher accomplishment is the most friendly thing that can be done for them in the present situation. It is true that the new idea has no stomach for the judicial shirking and judicial jumbling which has been current throughout our system. It will not tolerate the loss of years of time between precept and execution. The law exists for human convenience, and the courts must exemplify the spirit of the age or give way to other agencies. In the hierarchy of laws which they recognize they must put at the top above the Federal Constitution the laws of nature.

Lawyers should not begrudge the layman his honest efforts to better the present condition. At least they should not scold until they have advanced their own tried and proven plan. They may find on consideration that the intelligent layman will meet them on common ground when it is proposed to give the courts business management, and that out of it will come eventually a new life for our contentious system of adjudication.

Herbert Harley.

SECRETARY OF THE AMERICAN JUDICATURE SOCIETY.